

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MICHAEL TOLIVER,

Plaintiff,

-against-

THE CITY OF NEW YORK,
COMMISSIONER OF N.Y.C. DEP'T OF
CORRECTIONS, CHIEF OF N.Y.C.
DEP'T OF CORRECTIONS, WARDEN OF
G.R.V.C. (09-09 HAZEN ST.), N.Y.C.
CORRECTIONS CAPTAIN PRESSLEY #1176,
N.Y.C. CORRECTIONS BANKS # 819 –
(CAPTAIN), N.Y.C. CORRECTIONS
OFFICER BURTON #14371, N.Y.C.
CORRECTIONS OFFICER MCARDLE #17893,

Defendants.
-----X

10 Civ. 5806 (SHS)

ORDER

SIDNEY H. STEIN, U.S. District Judge.

On September 25, 2012, Magistrate Judge James C. Francis IV issued a Report and Recommendation (Dkt. No. 84) recommending that defendants' motion to dismiss the Second Amended Complaint for failure to state a claim upon which relief can be granted and for insufficient service of process be granted in part and denied in part, and that defendants' motion for a more definite statement pursuant to Fed. R. Civ. P. 12(e) be denied. This Court has received plaintiff's objections to the Report and Recommendation, all dated October 7, 2012 and all filed on October 15, 2012 (Dkt. Nos. 85–86, 88–89), and defendants' memorandum of law in opposition to plaintiff's objection dated November 5, 2012 (Dkt. No. 90). After a *de novo* review of the Report and Recommendation dated September 25, 2012, plaintiff's objections

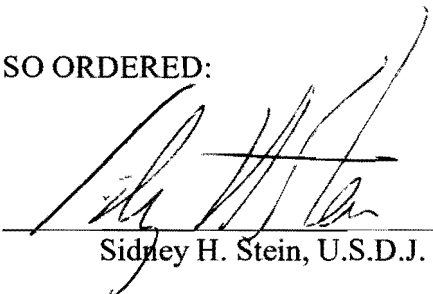
dated October 7, 2012, and defendants' opposition dated November 5, 2012, it is hereby ordered that:

- 1) Magistrate Judge Francis's Report and Recommendation is adopted in full substantially for the reasons set forth therein; and
- 2) Defendants the City of New York, the Commissioner of N.Y.C. Dep't of Corrections, Chief of N.Y.C. Dep't of Corrections, and Warden of G.R.V.C. (09-09 Hazen St.) are dismissed from this action.

Toliver has stated that defendants Banks and McArdle have been served with summonses and the Second Amended Complaint. However, the docket in this action does not reflect any such service of process. If defendants Banks and McArdle have been served, plaintiff shall file proofs of their service by March 15, 2013. If either defendant Banks or McArdle have not been served, defendant must complete service and file proof of service by March 15, 2013. Failure to serve these defendants by this date will result in their dismissal from this action.

Dated: New York, New York
January 11, 2013

SO ORDERED:



Sidney H. Stein, U.S.D.J.